



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 6 फरवरी, 2001/17 मार्च, 1922

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171009, 10 जनवरी, 2001

संख्या 3-14/2000-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० स०/7/98, दिनांक 21 दिसम्बर, 2000 तदनुसार 30 अग्रहायण, 1922 (शक्) जिसमें वर्ष 1998 की निर्वाचन अर्जी संख्या 7 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय का तारीख 8 दिसम्बर, 2000 का निर्णय निहित है, को अंग्रेजी रूपान्तर सहित, जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

भीमसेन,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001.

21 दिसम्बर, 2000

तारीख

अग्रहायण 30, 1922 (शक्)

अधिसूचना

संख्या 82/हि0 प्र0-वि0 स0/7/98.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1998 की निर्वाचन अर्जी संख्या 7 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 8 दिसम्बर, 2000 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

(के0 आर0 प्रसाद),

सचिव,

भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.

21st December, 2000

Dated—
Agrahayana 30, 1922 (Saka)

No. 82/HP-LA/7/98.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgement dated 8th December, 2000 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 7 of 1998.

By order,

K. R. PRASAD,

Secretary,

Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ELECTION PETITION NO. 7 OF 1998

Date of decision : December 8, 2000

Smt. Renu Chadha

Smt. Asha Kumari

Versus

— Petitioner.

— Respondent.

Coram.

THE HON'BLE MR. JUSTICE R. L. KHURANA, J.

Whether approved for reporting ? Yes

For the Petitioner: Mr. Bhoop Singh, Sr. Advocate with Mr. K. D. Sood, Advocate.

For the Respondent: Mr. S. C. Kapoor, Sr. Advocate with Mr. Inder Singh. Mr. Vijay Thakur and Mr. Lavnesh Kanwar, Advocate.

R. L. KHURANA, J.

By virtue of the present petition preferred under sections 80 and 81 read with section 100 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), the petitioner Smt. Renu Chadha, the defeated candidate from 51—Banikhet Assembly Constituency of Himachal Pradesh Vidhan Sabha, had called in question the election of the respondent. Smt. Asha Kumari, the returned candidate from such constituency.

The case of the petitioner, briefly stated, is that the respondent committed corrupt practice as envisaged under section 123 (7) of the Act inasmuch as she had obtained and procured the assistance of a Gazetted Officer, namely, Shri Attar Singh, the then District Primary Education Officer, Chamba, for furtherance of the prospects of her election. It has been averred that the respondent, at the relevant time, was the Minister-in-charge of Primary Education in the Government of Himachal Pradesh. She, by using her influence as such Minister, got letters of appointment issued to various persons of her constituency on 6-2-1998, 7-2-1998 and 9-2-1998 appointing them as Junior Basic Teachers and part time water carriers. It has further been averred that services of the above named Attar Singh were obtained and procured by the respondent for the purpose of issuance of such appointment letters for furtherance of her election prospects.

Further case of the petitioner is that the respondent is also guilty of corrupt practice of bribery as defined under section 123 (1) (A) (b) of the Act, since she had induced the electors of her constituency to vote for her by giving and offering them appointments as part time water carrier in different primary schools of her constituency. Two of such electors to whom the respondent is alleged to have bribed for their votes by giving them employment as part time water carriers are Smt. Kaushalya Devi widow of Karam Chand of Village Kathlog, and Smt. Kalawati wife of Mangat Ram of Village Dhura Sappar.

The respondent, while resisting the petition has denied the allegations of corrupt practices made against her by the petitioner. She denied having obtained and procured the services of Shri Attar Singh, the then District Primary Education Officer, Chamba, for furtherance of her election prospects. She also denied having bribed Smt. Kaushalya Devi and Kalawati or any other elector of her constituency by offering/giving them appointments as part time water carriers in order to induce them to vote for her.

It is the admitted case of the parties that Legislative Assembly elections in the State of Himachal Pradesh inclusive of 51—Banikhet Assembly Constituency, took place in the months of January/February, 1998, as per the election schedule announced by the Election Commission of India. The nomination papers were to be filed from 28-1-1998 to 4-2-1998. The scrutiny of nomination papers was to take place on 5-2-1998. Nomination papers could be withdrawn by 7-2-1998. Allotment of symbols was to be made on 7-2-1998 after 3 p. m., as constituency was to go for polls on 28-2-1998 and counting was to take place on 2-3-1998. The petitioner filed her nomination paper as a candidate for Bhartiya Janta Party on 29-1-1998 while the respondent

Whether reporters of local may be allowed to see the judgement? Yes.

filed her nomination paper as a candidate of Congress Party on 3-2-1998. There were two other candidates in the field, that is, Shri D. R. Nirdoshi of the Communist Party of India, and Hem Raj of the Himachal Vikas Congress. The result of the election was declared on 3-3-1998. The respondent, who had secured 22509 Votes as against 22,088 Votes secured by the petitioner was declared elected.

On the pleadings of the parties, following issues were framed on 4-9-1998:

1. Whether the respondent is guilty of committing corrupt practices as defined under Section 123 (7) of the Representation of People Act as alleged in the Election Petition ? OPP.
2. Whether the respondent has committed corrupt practices of bribery as defined under Section 123 (1) (A) and (B) of the Representation of People Act as alleged in the Election petition ? If so, its effect ? OPP.

Both the parties have led oral as well as documentary evidence in support of their respective claims.

I have heard the learned counsel for the parties and have also gone through the record of the case. My findings on the above issues are as under :

Issue No. 1 :

Section 123 of the Act, insofar as it is material for the purpose of the present issue, reads :—

“The following shall be deemed to be corrupt practice for the purposes of this Act:

- | | | | | | |
|-----|-------|-------|-------|-------|-------|
| (1) | ..... | ..... | ..... | ..... | ..... |
| (2) | ..... | ..... | ..... | ..... | ..... |
| (3) | ..... | ..... | ..... | ..... | ..... |
| (4) | ..... | ..... | ..... | ..... | ..... |
| (5) | ..... | ..... | ..... | ..... | ..... |
| (6) | ..... | ..... | ..... | ..... | ..... |

- (7) The obtaining or procuring or abetting attempting to obtain or procure by a candidate or his agent, or by any other person, with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers ;
- (b) setependiary judges and magistrates ;
- (c) members of the armed forces of the union ;
- (d) members of the police forces ;
- (e) excise officers ;
- (f) revenue officers other than village revenue officers known as lamardars, malguzars—patels, deshmukhs or by any other name, whose duty is to collect land revenue

and who are remunerated by a share of, or commission on, the amount of revenue collected by them but who do not discharge any police functions; and (g) such other class of persons in the service of the Government as may be prescribed:

Provided that where any person. In the service of the Government and belonging to any of the classes aforesaid. In the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangement, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

(8)
.....

Explanation.—(1) In the section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

(3) for the purposes of clause (7) notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union Territory) or of a State Government shall be conclusive proof:

(i) of such appointment, resignation, termination of service, dismissal or removal from service, the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

(4)
.....

The case as to corrupt practice of obtaining and procuring the assistance of a Gazetted Officer by the respondent for furtherance of her election prospects is to be found mentioned in paras 4 and 6 of the election petition, which are extracted and reproduced hereinbelow:—

“4. That the respondent committed the corrupt practice as envisage under Section 123t (7) as she obtained and procured assistance of a Gazetted Officer of the Governmen. of Himachal Pradesh namely Shri Attar Singh, District Primary Education Officere Chamba, District Chamba, for the furtherance of prospects of her election. Thn respondent started her election campaign much before the issuance of the Notificatiog under Section 30 of the Act, though she filed her nomination paper on 3-2-1998. Durin her election campaign she faced hos'ile attitude of the electors especially the unemp loyed youths and their parents and other persons to whom promises were made for providing them employment by her in the earlier election and afterwards also but those promises were not fulfilled. Hundred of unemployed youth of the Constituency

who were selected as J. B.T. Teachers but were not given appointment letters due to the ban imposed by the Election Commission of India on fresh appointments during elections and their parents were awfully hostile towards the respondent and were not ready to listen to her. They were demanding that if she wants their votes then appointment letter should be given to them and they be allowed to join. She pleaded that the Election Commission of India has banned the new appointments, so, it is very difficult to give them letters of appointment. However, this explanation did not satisfy them and they were adamant to get the letters of appointment in case she wanted to get their votes. Faced with this peculiar and hostile situation, the respondent called the District Primary Education Officer, Chamba, namely Shri Attar Singh who is a Gazetted Officer of Himachal Pradesh Government in P. W. D. Rest House, Banikhet on 4-2-1998 at about 9.00 p. m. where S/Shri Amar Nath son of Puran, resident of Kunna, Tehsil Dalhousie, member of Block Development Committee and Shri Pawan son of Gian Chand, resident of Lutnu, Tehsil Dalhousie, District Chamba and Chain Lal son of Damnu Ram, resident of Village Sakrera, Tehsil Dalhousie were also present with the respondent. The respondent asked said Shri Attar Singh to issue letters of appointment to J.B.T. Teachers in her constituency and allow them to join. However, Shri Attar Singh, District Primary Education Officer, Chamba was reluctant to do the same as fresh appointments were banned by the Election Commission of India and a letter to that effect had also been issued by the Chief Secretary, Himachal Pradesh. Moreover, in case he issues letter of appointment to J. B. T. Teachers in this constituency then he will have to issue letters to others also in the District. The respondent requested him to do the same otherwise she will be in great difficulty and looking at the hostile attitude of those persons, she may lose the election. S/Shri Amar Nath, Pawan and Chain Lal aforesaid pleaded with Shri Attar Singh, the District Primary Education Officer, Chamba, to issue the letters otherwise the respondent's chances of success in the election would be damaged to a large extent. However Shri Attar Singh still remained reluctant saying that his own service would be at stake in case he issues letters of appointment in violation of ban imposed by Election Commission of India. The respondent assured Shri Attar Singh that since she is the Minister Incharge of the Department and her uncle is the Chief Minister of Himachal Pradesh, so no harm could be caused to him and in case the letters of appointment are not issued her chances in election are going to be damaged. After a lot of persuasion by the respondent and the persons present there ultimately Shri Attar Singh agreed to issue letters of appointment to the J. B. T. Teachers. A large number of letters of appointment were issued to the candidates in the Constituency on 6-2-1998, 7-2-98 and 9-2-98 and thereafter by Shri Attar Singh, District Primary Education Officer, Chamba and those persons had joined duties during election i. e. on or before 16-2-1998.

- (5) This had enhanced her chances of success in the election. The details of some of the letters of appointment issued to candidates in this constituency are given below : —

Sl. No.	Name of candidate and address	Endorsement No. and Date
1	2	3
1.	Jagjit Singh s/o Munshi Ram, Village P. O. Sangrahan, Tehsil Dalhousie, District Chamba.	3510-12, dated 6-2-98
2.	Pano Devi d/o Himtu Ram, Village Jaddu, P. O. Surdani Tehsil Salooni, District Chamba.	3580-82. dated 6-2-98
3.	Reena Devi d/o Laxman Dass, Village Rachhita, P. O. Andral via Sundla, District Chamba.	3583-85. dated 6-2-98

1	2	3
4.	Renu Bala d/o Hari Ram, Village Chaugan (BKT) P.O. Chaugan, Distt. Chamba.	3586-88, dated 6-2-98
5.	Manoj Kumar s/o Jaswant Singh, r/o Ladog, P.O. Chandi, Tehsil & Distt. Chamba.	3589-91, dated 6-2-98
6.	Neeraj Kumar s/o Amar Singh, Village & P.O. Banikhet, Distt. Chamba.	3595-97, dated 6-2-98
7.	Neelam d/o Shri Amar Singh, V.P.O. Banikhet, Distt. Chamba.	3598-3600, dated 6-2-98
8.	Dharam Chand s/o Bainsu Ram, V.P.O. Diur, Tehsil Salooni, Distt. Chamba.	3643-45, dated 6-2-98
9.	Monika Thapa d/o Dhan Bhadur, V.P.O. Banikhet, Distt. Chamba.	8480-81, dated 6-2-98
10.	Devi Chand s/o Dala, Village Helaa, P.O. Zuhalda, Tehsil and Distt. Chamba.	8667-68, dated 7-2-98
11.	Indu Bala d/o Ruldu Ram, V.P.O. Mail Tehsil. Dalhousie, Distt. Chamba.	8669-70, dated 7-2-98
12.	Pawan Kumar s/o Gurdhiyan Ram, Village Kuthar, P.O. Kaudla Distt. Chamba.	8669-70, dated 7-2-98
13.	Pushpa Devi w/o Ashwani Kumar, Village Bhatoli, P.O. Chandi Ladog, Distt. Chamba.	8671-72, dated 7-2-98
14.	Kuresh Mohd. s/o Latiff Mohd., Village Tihar, Tehsil Salooni, Distt. Chamba.	8673-74, dated 7-2-98
15.	Gajender Singh s/o Bainsu Ram, Village Kandi, P.O. Bhalei, Tehsil Salooni, Distt. Chamba.	8673-74, dated 9-2-98
16.	Darshan Singh s/o Narain Dass, Village Kundi, Tehsil Salooni, Distt. Chamba.	8675-76, dated 9-2-98
17.	Keshru Ram s/o Bhilo Ram, Village Thala, P. O. Sundla, Tehsil Salooni, Distt. Chamba.	8677-78, dated 9-2-98

Copies of above said letters of appointment are annexed as Annexure P/1 to P/17 and their true typed copies are annexed as Annexure P/1-A to P/17-A. So, the respondent is guilty of committing corrupt practice of obtaining and procuring the assistance of Gazetted Officer of the State Government. Shri Attar Singh, District Primary Education Officer, Chamba for the furtherance of prospects of her election, so, the respondents's election is liable to be declared void and set aside.

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- (6) That the respondent is also guilty of committing corrupt practice of obtaining and procuring the assistance of the Gazetted Officer namely Shri Attar Singh, District Primary Education Officer, Chamba, who issued letters of appointment as part time Water Carrier in Government Primary Schools at the behest of respondent Smt. Asha Kumari to the persons named in para 5 above for the furtherance of the prospects of her election. The necessary material facts and particulars regarding committing of corrupt practice as envisaged under section 123(7) of the Act i.e. obtaining and procuring assistance of a Gazetted Officer of the the State Government for the furtherance of prospects of her election are already detailed in paragraph 5 above as stating those material facts and particulars again in this paragraph would be a repetition of same material facts and particulars which constitute corrupt practices committed by the respondent under Section 123 (1) (A)(b) and 123(7) of the Act."

The above averments made by the petitioner have been specifically denied by the respondent in her written statement.

The petitioner in her rejoinder, dated 17-6-1998 *vide* para 4, while reiterating the earlier allegations has further averred that the Election Commission of India had banned all transfers, appointments etc., and had directed that all appointments/recruitments be held up till 15-3-1998. The District Primary Education Officer Shri Attar Singh had issued letters of appointment at the behest and direction of the respondent in order to enhance the chances of her success in the election.

Before this court proceeds to deal with the evidence led by the petitioner as to the commission of corrupt practices by the respondent, it will not be out of place to state a few well settled legal principles with regard to challenge to an election on the grounds under section 123 of the Act.

In *Rahim Khan versus Khurshid Ahmed and others* (AIR 1975 SC 290), dealing with the question of nature and burden of proof of corrupt practice, it was held :

“.....An election once held is not to be treated in a lighthearted manner defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a *quasi*-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.”

Again in *Lakshmi Raman Acharya Versus Chandan Singh and Others* (AIR 1977 SC 587), and in *Amolak Chand Chhazad versus. Bhagwandas Arya (Dead and another)* (AIR 1977 SC 813), it has been held that election petitions alleging corrupt practices are proceedings of a *quasi* criminal nature and the *onus* is very heavy on the person who challenges the election to prove the allegations beyond a reasonable doubt.

In *A. Younus Kunju V. R. S. Unni and Others* (AIR 1984 SC 960), it has again been held that a charge of corrupt practice under the Act has to be proved beyond a reasonable doubt and the standard of proof is the same as in a criminal case.

Reiterating the same principle in *Surinder Singh V. Hardial Singh and Others* (AIR 1985 SC 89), it has been held :

“It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials.”

In *Thakur Sen Negi V. Dev Raj Negi and Another* (AIR 1994 SC 2526), it has been held that since allegations in regard to corrupt practice are *quasi*-criminal in nature and entail the penalty of disqualification, the court would be justified in looking for strong and dependable evidence and its refusal to have its decision on oral evidence alone would not be justified, if the said evidence is not supported by strong, reliable and trustworthy corroboration.

Further in *Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghe and others* (AIR 1995 SC 2284), it has been held :

Though the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate upset, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petitioner has to succeed, he must establish definitely and to the satisfaction of the court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In the case of an election petition, based on allegations of commission of corrupt practice, the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift."

To the similar effect are the decisions in *R. P. Moidutty v. P. T. Kunju Mohammad and another* [JT 1999 (7) SC 457], and in *Jeet Mohinder Singh v. Harinder Singh Jassi* (AIR 2000 SC 256).

Once the charges of corrupt practices are to be equated with criminal charges required to be proved beyond reasonable doubt as in criminal trials, the other two principles of criminal jurisprudence, namely, that the benefit of doubt should go to the accused (the returned candidate), and that if from the facts and circumstance of the case two views are possible then the one favourable to the accused (returned candidate) is to be accepted, would also become applicable.

The Supreme Court in *Abdul Husasin Mir v. Shamsul Huq and another* (AIR 1975 SC 1612), has held that when elections are challenged on the grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate.

(Emphasis supplied)

In *Ch. Razik Ram v. Ch. J. S. Chouhan and others* (AIR 1975 SC 667), it was again held :

Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious, penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the Respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by

clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of 'proved' in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainly amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. 'Proof' means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by a mere balance of probabilities and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt-not being the doubt of a timid, fickle or vacillating mind-as to the veracity of the charge, it must hold the same as not proved."

Reiterating and affirming the above ratio in *Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghas and others* (AIR 1995 SC 2284) (*Supra*), it was further held :

"We are in respectful agreement with the above view. Some times direct evidence about the commission of corrupt practice may not be forthcoming or available and in that case, the charge may be proved by producing circumstantial evidence but the courts, in such cases insist, that each of the circumstances must be proved individually and all the circumstances put together must point unerringly only to the hypothesis of the commission of the corrupt practice by the returned candidate and must not be capable of any other hypothesis consistent with the innocence of the returned candidate."

The Supreme Court in *Daulat Ram Chauhan v. Anand Sharma* (AIR 1984 SC 621), has held that where the allegation of fraudulent practice is open to two equal possible inferences, the pleadings of corrupt practice must fail

"The principle of criminal law that suspicion howsoever strong cannot take the place of proof was also applied in the case of proof of charge of corrupt practice in *R. P. Modetty v P. T. Kunju Mohammad and another* (*Supra*).

The evidence led by the petitioner in the present case is, therefore required to be examined in the light of the above principles.

Ex. PW 4/A to PW 4/H and PW 4/J to PW 4/P are the copies of appointment letters issued to the persons detailed in para 4 of the election petition (quoted above) except the persons named at Serial Nos. 5 (Manoj Kumar), 10 (Devi Chand) and 13 (Pushpa Devi) appointing them as Junior Basic Teachers. These appointment letters are shown to have been issued by the District Primary Education Officer, Chamba, on 6-2-1998, 7-2-1998 and 9-2-1998.

Ex. P.1 to P.12 are the voter lists in respect of 51-Banikhet Assembly Constituency. These voter lists have been produced in evidence to show that the persons (detailed in para 4 of the petition) to whom appointment letters as Junior Basic Teachers were issued, were the electors of the constituency from which the parties had contested the election. A combined reading of

the letters of appointment Ex. PW 4/A to PW 4/H and PW 4/J to PW 4/P alongwith the voter lists Ex. P. 1 to P. 12 brings out the position as under:—

Sl. No. of the person as in para-4 of the petition	Name and address of the person	Appointment letter	Vote list	Serial No. in the Voter list
1	2	3	4	5
1.	Jagjit Singh son of Munshi Ram, Village & P. O. Sangrehan, Tehsil Dalhousie, District Chamba.	Dated 6-2-1998 Ex. PW 4/A.	Ex P 1	733
2.	Pano Devi d/o Himtu Ram, Village Jaddu, P. O. Surga i. Tehsil Salooni, District Chamba.	Dated 6-2-1998 Ex. PW4 B.	Ex. P 2	884
3.	Reena Devi d/o Laxman Dass, Village Rachhita, P. O. Andral via Sundla, District Chamba.	Dated 6-2-1998 Ex. PW 4/C.	Ex. P 3	98
4.	Renu Bala d/o Hari Ram, Village Chuhan (BKT), P. O. Chuhan, District Chamba.	Dated 6-2-1998 Ex. PW4/D.		—
5.	Manoj Kumar son of Jaswant Singh, Village Ladog, P. O. Chandi, Tehsil and District Chamba.	—		—
6.	Necraj Kumar son of Amar Singh, Village & P. O. Banikhet District Chamba.	Dated 6-2-1998 Ex. PW4/F.	Ex. P 4	773
7.	Neclam daughter of Amar Singh, Village & P. O. Banikhet, District Chamba.	Dated 6-2-1998 Ex. PW4/G.		—
8.	Dharam Chand s/o Bainsu, Village & P. O. Diur, Tehsil Salooni, District Chamba.	Dated 6-2-1998 Ex. PW4/H.	Ex. P 5	320
9.	Monika Thapa d/o Dhan Bahadur, Village & P. O. Banikhet, District Chamba.	Dated 6-2-1998 Ex. PW4/J.	Ex. P 4	507
10.	Devi Chand s/o Dala Village Helaa, P. O. Zuhalda, Tehsil and District Chamba.	—		—

1	2	3	4	5
11.	Indu Bala d/o Ruldu Ram, Village & P. O. Mail, Tehsil Dalhousie, District Chamba.	Dated 7-2-1998 Ex. PW4/K.	Ex. P 6	418
12.	Pawan Kumar son of Gurdhiyan Ram, Village Kuthar, P. O. Kudla, District Chamba.	Dated 7-2-1998 Ex. PW4/L.	—	—
13.	Pushpa Devi w/o Ashwani Kumar, Village Bhatoli, P. O. Chandi Ladog, District Chamba.	—	—	—
14.	Kuresh Mohammad s/o Latift Mohd. Village Kandi, P. O. Bhalei, Tehsil Salooni, District Chamba.	Dated 7-2-1998 Ex. PW4/N.	Ex. P 7	
15.	Gajender Singh s/o Bainsu Ram, Village Kundi, P. O. Bhalei, Tehsil Salooni, District Chamba.	Dated 9-2-1998 Ex. PW4/M.	Ex. P 8	100
16.	Dharshan Singh s/o Narain Dass, Village Kaundi, Tehsil Salooni, District Chamba.	Dated 9-2-1998 Ex. PW4/O	Ex. P 9	100
17.	Keshru Ram son of Bhilo Ram, Village Thala, P. O. Sundla, Tehsil Salooni, District Chamba.	Dated 9-2-1998 Ex. PW4/P.	Ex. P 10	931

The petitioner has averred that these appointment letters were issued by the District Primary Education Officer at the instance and asking of the respondent, who at the relevant time was the Minister Incharge of Primary Education, in order to enhance her election prospect. The respondent, on the other hand, while not disputing the issuance of these appointment letters by the District Primary Education Officer, Chamba, has averred that such letters of appointment were not issued at the instance but were issued by the authorities at their own instance in the routine official manner.

The case of the petitioner that the letters of appointment of Junior Basic Teacher were issued at the instance of the respondent for furtherance of her election prospects rests primarily on the evidence of PW 8 Amar Nath and PW9 Pawan Kumar. According to both these witnesses they had met the respondent on the night of 4-2-1998 at Banikhet Rest House, when Shri Attar Singh (RW 9) the then District Primary Education Officer, Chamba, were also present. In their presence, the respondent is alleged to have told RW 9 Shri Attar Singh that wherever she had been going, she was receiving the complaints that no appointments were being given to trained Junior Basic Teachers and that he (RW 9) should issue appointment letters so as to enable her to win the election. RW 9 Sh. Attar Singh is alleged to have

informed the respondent that since there was a ban regarding appointments, his service would be in danger in case the letters of appointment were issued by him. The respondent is then alleged to have told and assured RW 9 Sh. Attar Singh that he should not worry since she was the Minister Incharge and that her uncle was the Chief Minister. On such assurance RW 9 Attar Singh agreed to issue appointment letters.

The respondent in para 4 at page 8-A of her written statement has averred with regard to PW 8 Amar Nath and PW 9 Pawan Kumar as under ;—

“The allegations that the three staunch workers and active supporters of B. J. P., i. e. S/Shri Amar Nath, Pawan and Chain Lal would be accompanying the respondent is far from truth and has been coined for the purpose of producing them as witnesses against the respondent. Shri Amar Nath was the President of B. J. P. Block Banikhet and now-a-days he is an office bearer of B. J. P. Shri Pawan and Chain Lal are the active members of B. J. P. Shri Amar Nath referred to above had approached for B. J. P. ticket for Himachal Pradesh Vidhan Sabha against the respondent and he was doing so since last 4 elections”.

With regard to her alleged presence at Banikhet on the night of 4-2-1998, the respondent has averred :—

“In fact on 4-2-1998, the respondent was in Salooni Rest House having toured Haloori, Sindla, Punna, Dhutta, Garohan and Chandi accompanied by her Personal Security Officer Head Constable Shri Ram Pal Sharma and S/Shri Dharam Singh Pathania, Chairman, Salooni Block Samiti and others”.

The above averments of the respondent have been denied by the petitioner in her rejoinder. In reply to these averments, she has averred :—

“It is absolutely wrong that on 4-2-1998 the respondent was in Salooni Rest House having toured Haloori, Sindla, Punna, Dutt, Dhaneli Kuthed, Gulel, Garohan and Chandi accompanied by her Personal Security Officer Shri Ram Pal Sharma and S/Shri Dharam Singh Pathania, Chairman, Salooni Block Samiti and others. As a matter of fact on 4-2-1998 she was in P. W. D. Rest House, Banikhet as mentioned in paragraph 4 of the election petition. The averments made in corresponding paragraph 4 of the election are reiterated.

It is absolutely wrong that S/Shri Amar Nath, Pawan and Chain Lal are the active members of the B. J. P. It is further wrong hence denied that Shri Amar Nath was the President of B. J. P. Block Banikhet and he is an office bearer of B. J. P. now-a-days. It is further wrong hence denied that Shri Amar Nath tried for B. J. P. ticket and that he was doing so since last four years. The persons mentioned above are staunch activists of Congress (I) and supporters of the respondent.

It has come in evidence led by the petitioner herself that PW8 Amar Nath and PW 9 Pawan Kumar were and are staunch activists of the Bhartiya Janta Party of which Party the petitioner was a candidate.

PW 8 Amar Nath has admitted to the following facts in his cross-examination :—

- (a) he was one of the proposers for the petitioner *vide* nomination form Ex. RA dated 29-1-1998 ;
- (b) he has been a worker of erstwhile Jansangh Party, Janta Party and Bhartiya Janta Party and has also been an Office bearer for the Mandal Janta Party;

- (c) he is an Executive Member of Mandal Bhartiya Janta Party for the last one year ;
- (d) on the formation of Bhartiya Janta Party Government in the State S/Shri Ram Singh and Kunj Lal, who were Chairman and Vice Chairman respectively of Bhatiyat Panchayat Samiti, were removed from their respective Office and in the re-election to such Samiti he was elected as Chairman ;
- (e) a procession was taken out in the area after he was elected Chairman of the Bhatiyat Panchayat Samiti ;
- (f) in the photograph Ex. RB the petitioner is shown as a part of the said procession ;
- (g) PW 9 Pawan Kumar and Chain Lal were his supporters and PW 9 Pawan Kumar was one of the members in the procession, photograph of which is Ex. RB ;
- (h) everyone in the area knows that he has been a worker of Jansangh and Janta Party and that he is a worker of Bhartiya Janta Party ;
- (i) during the last three elections prior to 1998 in which the respondent had contested as a Congress candidate, he had been supporting the candidate of Bhartiya Janta Party ; and that
- (j) inspite of his having supported the Congress candidate, that is, the respondent, during the current election, he continues to be an Executive Member of Mandal Bhartiya Janta Party.

The petitioner, while appearing as her own witness as RW 7, has admitted that PW 8 Amar Nath is her confidant and she believed him, though she has hastened to add that he became her confidant only after the elections. She has also admitted that PW 8 Amar Nath was one of her proposers in the nomination paper Ex. RA. She has also stated and admitted the following:—

“I have read portion mark-X in para 4 of my rejoinder dated 17-6-1998 wherein I have described Shri Amar Nath above named as a strong activist of Congress (I) and the supporter of the respondent. I have denied therein that said Amar Nath was an active member and office bearer of the B. J. P. I had also denied that he had tried for B. J. P. ticket and has been doing so for the last four times. The statement made by me today with regard to Amar Nath being an active member of the B. J. P. and his having tried for the B. J. P. ticket is correct and the averments made at point-X in para 4 of the rejoinder are wrong.

PW 9 Pawan Kumar, as admitted by PW 8 Amar Nath, is his supporter, and as such he is also a supporter of the petitioner. It is in the statement of PW 9 himself that the petitioner is the President of Municipal Council, Dalhousie and that he has been allotted a plot on “Teh-Bazari” basis by the Municipal Council, Dalhousie. Though, he has denied that such allotment of plot in his favour was obtained by him with the help of the petitioner.

Ex. RW 10/A is the copy of a criminal complaint made by one Ashok Kumar son of Puran Chand against the husband of the respondent and six others for their prosecution for the offences under sections 500, 506 and 379, Indian Penal Code, and under sections 26, 32, 33, 41 and 42 of the Indian Forest Act, PW 9 Pawan Kumar has admitted that the complainant Ashok Kumar, above named is his brother-in-law (sister's husband). This complaint was presented to the court of Additional Chief Judicial Magistrate, Dalhousie on 8-12-1997 and PW 9 Pawan Kumar is named as one of the prosecution witnesses. PW 9 Pawan Kumar has not denied the fact that he is named as a witness by his brother-in-law against the husband of the respondent. He has only pleaded ignorance. He has deposed:—

“I know Ashok Kumar son of Puran Chand of Village Rohla, Pargana Bathri. He is my sister's husband. I do not know if I am cited as a witness for Ashok Kumar in a complaint filed by him against the husband of the respondent. I do not know if any such complaint has been filed by Ashok Kumar against the husband of the respondent”.

The petitioner has also admitted that PW 9 Pawan Kumar is a co-accused with her and her son in case registered at the instance of Head Constable Rakesh Kumar.

Apart from the fact that PW 8 Amar Nath and PW 9 Pawan Kumar have been shown and proved to be interested witnesses for the petitioner, their evidence that the respondent on the night of 4-2-1998 was present at the Rest House, Banikhet where they claim to have met her also stands belied by the documentary evidence coming on record.

According to the respondent, she was not present at Banikhet on 4-2-1998. Rather she was at Salooni where she had stayed after touring some parts of her constituency. Ex. RW 19/B is the original entry made in the visitor's register of Rest House, Salooni. A perusal of such entry shows that the respondent stayed in the Rest House at Salooni from 10.30 P.M. of 3-2-1998 till 9 A.M. of 5-2-1998. The entry is in the hand of and signed by RW 19 Shri Ram Pal, who at the relevant time, admittedly, was the Personal Security Officer of the respondent. Nothing could be elicited from RW/19 during his cross examination to show that the entry EX. RW 19/B is wrong and/or that the respondent never stayed at Salooni on 4-2-1998 or that she was in fact staying in the Rest House at Banikhet.

The best available evidence to show that the respondent on 4-2-1998 was staying at Banikhet, was the visitor's Register of the Rest House at Banikhet. No such evidence has been led/produced by the petitioner. Nor any official of such Rest House has been examined. Failure of the petitioner to lead the best available evidence leads to the only inference that had such evidence been produced the same would not have supported the case of the petitioner.

Once the story of the petitioner that PW 8 Amar Nath and PW 9 Pawan Kumar had met the respondent on the night of 4-2-1998 at Rest House Banikhet is disbelieved, no reliance can be placed on the testimony of PW 8 and PW 9 that the respondent had obtained the services of RW 9 Attar Singh, the then District Primary Education Officer, that is, a Gazetted Officer for furtherance of her election prospects. Similarly, the evidence of PW 8 and PW 9 that they had accompanied the respondent during her election campaign on 9-2-1998 and 11-2-1998 can not be relied upon.

In *D. Venkata Reddy v. R. Sultan and others*. (AIR 1976 S. C. 1599), it was alleged by the election petitioner therein that while he was returning from Taluk Office on a certain date, the returned candidate met him and wished him and after talking for some time he (the returned candidate) made an offer of Rs. 25,000/- to be paid to him (the petitioner) if he agreed to withdraw from the election and help him (the returned candidate). Even after the petitioner refused the offer he was again persuaded by the returned candidate to consider the offer. On his final refusal, the returned candidate threatened him that he was bound to face defeat in the election. The witnesses produced by the petitioner were not only close friends of the petitioner but were also his supporters and workers. The evidence was sought to be corroborated by equally interested witnesses. No attempt was made to examine any independent witness even though the evidence was that apart from the witnesses produced other persons were also present. The evidence indicated that the offer of bribe was made in an open and crowded place near the Taluk office and the District Munsif's Court.

Disbelieving the oral evidence led by the petitioner, it was held:—

“.....it is impossible to believe that even if the offer of bribe is made it would be made in the presence of the witnesses who were accompanying Sultan so that the person who makes the offer of bribe would be a party to the creation of clear evidence against him. It is absolutely against the normal and prudent human conduct to make such an offer at a crowded place in the presence of the two witnesses who were known to be the supporters of the contesting respondent and persist in making the offer in

spite the blunt refusal of the same by the contesting respondent. On the other hand the natural conduct of the appellant would have been to take the contesting respondent to a secluded spot where he would not be seen or heard by anybody and then make offer...."

Further dealing with oral testimony in election case, the Apex court in *Rahim Khan v. Khurshid Ahmed and others* (supra) has pithily observed in para 21 of the report as follows:—

"We must emphasise the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half a dozen witnesses apparently respectable and disinterested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of ilkeny cat election competitions and partisan witnesses wearing robes of veracity, to upturn a heard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances on unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

The above view was reiterated by the Apex Court in *Kanhaiyalal v. Mannalal and others* (AIR 1976 S C 1886)".

In *Amolak Chand v. Bhagwan Dass* (supra) it was again reiterated and emphasised that it is unsafe to accept oral evidence in an election case at its face value without looking for assurance from some surer circumstances or unimpeachable documents.

In the present case as well, PW 8 Amar Nath and PW 9 Pawan Kumar are interested witnesses. They have been shown to be active workers and supporters of the Bhartiya Janta Party. It cannot be believed that the respondent, knowing these two witnesses to be active workers and supporters of the Bhartiya Janta Party, would confide in them to the extent of calling RW 9 Shri Attar Singh, the then District Primary Education Officer and telling him to issue the appointment letters to Junior Basic Teachers for the furtherance of her election prospects. Besides, the documentary evidence, as discussed above, shows that the respondent was in fact not present at Banikhet at the relevant time. No reliance, therefore, can be placed on the evidence of PWs 8 and 9. Besides, there is no other independent and unimpeachable evidence in support of the case of the petitioner.

Insofar as the evidence of the petitioner herself is concerned, the same is hearsay and can be ignored simply on this ground. The petitioner, while appearing as PW 7, during her cross-examination, has admitted :

"It is correct that I have no personal knowledge with regard to the meeting of Amar Nath and Pawan Kumar with the respondent and as to what has transpired on various dates. It is correct that I have no personal knowledge with regard to all the facts stated by me in my examination-in-chief. It is correct that whatever was told to me by Amar Nath, I had believed the same to be correct".

There is no denying that the appointment letter Ex. PW 4/A to PW 4/H and PW 4/J to PW 4/P were issued on 6-2-1998, 7-2-1998 and 9-2-1998. It is also not disputed that the general code

of conduct issued by the Election Commission of India had come into force with effect from 1-1-98. Under such code no fresh recruitments could be made till 15-3-1998.

Even if the appointment letters are shown to have been issued during the ban and in violation of the "General Code of Conduct" of the Election Commission of India, it cannot be presumed that such letters of appointment were issued at the instance of the respondent for furtherance of her election prospects. The respondent cannot be blamed even if the concerned officers of the Education Department, including RW 2 Smt. Rajwant Sandhu, the then Secretary (Education) and RW 9 Shri Attar Singh, the then District Primary Education Officer, Chamba, might have acted in violation of the ban and the "General Code of Conduct" issued by the Election Commission of India.

It is in evidence of RW 1 Shri J. C. Kaundal, Superintendent in the Directorate of Primary Education, that appointment letters in respect of Junior Basic Teachers were issued in Districts Hamirpur, Bilaspur, Mandi and Shimla in the month of January 1998 and in the Districts of Sirmour and Chamba in the month of February, 1998. Thus, appointments were made not only in the constituency of the parties but were also made in other districts of the State. It is not the case of the petitioners that appointments throughout the State were made at the instance of the respondent. The appointments of Junior Basic Teachers throughout the State appear to have been made in violation and contravention of the ban imposed by the Election Commission of India.

Considering the entire evidence coming on the record in its totality, the only irresistible conclusion is that the petitioner has not been able to prove, beyond a reasonable doubt, that the respondent is guilty of having committed corrupt practice in obtaining the assistance of a Gazetted Officer for furtherance of her election prospects within the meaning of section 123 (7) of the Act. The suspicion, if any, however strong against the respondent, cannot take the place of proof. The issue is, accordingly, decided against the petitioner.

Issue No. 2 :

The allegations as to commission of corrupt practice of bribery by the respondent within the meaning of section 123 (1) (A) (b) of the Act detailed in para 5 of the election petition, are as under :

"That the respondent has committed the corrupt practice of bribery as defined under Section 123 (1) (A) (b) of the Act by inducing the electors to vote for her by giving them appointment/employment as part time Water Carrier in different primary schools in her constituency, so her election is liable to be declared void and set aside. The material facts and particulars are given herebelow :

The respondent Smt. Asha Kumari respondent went to village Kathlog on 9-2-1998 at about 10.00 A. M. for campaigning and she was accompanied amongst others by Shri Amar Nath son of Puran, resident of Kuna, Tehsil Dalhousie, a member of Block Development Committee and Shri Pawan son of Shri Gian Chand r/o village Lutnu, Tehsil Dalhousie. While canvassing they reached the house of late Shri Karam Chand resident of village Kathlog for soliciting their votes. Shri Karam Chand's widow Smt. Kaushalya Devi was present in the house. Respondent requested her to vote and support her. However, she blantly refused to vote for her. Said Shri Amar Nath and Pawan pleaded with her to vote and support respondent Smt. Asha Kumari, however, she remained adamant. She told Smt. Asha Kumari that they have no source of livelihood and they will cast their vote in favour of that candidate only who will provide them a job. Smt. Asha Kumari promised to provide a job to

her as part time Water Carrier in Government Primary School, in case they vote for her and support her. She again refused to vote for and support her saying that such sort of promises were made by her in the earlier election and thereafter also. However, even after meeting her a number of times, only promises were made and no job was provided. Smt. Asha Kumari respondent stated that she will hand over letter of appointment to Smt. Kaushalya Devi and after getting the appointment they should vote for her in the election. A bargain was struck between Smt. Asha Kumari respondent and Smt. Kaushalya Devi to the effect that she will hand over the appointment letter to Smt. Kaushalya Devi and in turn they would vote for her and support her in the election. In pursuance of this bargain Smt. Asha Kumari got an assurance from Smt. Kaushalya Devi that in lieu of providing job to them they will vote and support her in the coming elections. On 11-2-1998 Smt. Asha Kumari again went to the village Kathlogat about 10.30 A.M. alongwith Mr. Attar Singh, District Primary Education Officer, Chamba. Shri Amar Nath and Shri Pawan aforesaid and went to the house of late Shri Karam Chand. Respondent Smt. Asha Kumari directed Shri Attar Singh, District Primary Education Officer, Chamba to hand over letter of appointment to Smt. Kaushalya Devi wife of late Shri Karam Chand appointing her as a part time Water-Carrier in Government Primary School, Drabber-II which was handed over by Shri Attar Singh to Smt. Kaushalya Devi. In pursuance of this letter of appointment Smt. Kaushalya Devi joined as part time Water Carrier in Primary School, Drabber-II on 16-2-98. So the respondent has committed the corrupt practice as envisaged under Section 123 (A) (b) of the Act. So her election is liable to be set aside. Copy of the appointment letter is attached as Annexure P/18 and its true typed copy is attached as Annexure P 18/A. Though the letter is dated 15-12-97, yet the same was actually given to Kaushalya Devi on 11-2-98 and was ante-dated.

Smt. Asha Kumari, respondent also went to Village Dhura Sappar, Tehsil Dalhousie alongwith S/Shri Amar Nath and Pawan aforesaid on 9-2-98 at about 11.30 A.M. for canvassing. While canvassing they reached the house of Shri Mangat Ram where Smt. Kalawati w/o Mangat Ram was present. Smt. Asha Kumari respondent and aforesaid persons requested her to vote and support Smt. Asha Kumari. However, she bluntly refused to vote and support her and said that the respondent has not fulfilled her earlier promise of providing her employment/job. The respondent pleaded with her to vote for and support her saying that this time she will be provided job definitely. However, this promise/assurance did not satisfy her. On which the respondent told her that she would be handed over letter of appointment as a part time Water Carrier in the Government Primary School and after receipt of that letter she should vote for and support her. On 11-2-98 at about 1.00 p. M. Smt. Asha Kumari respondent again went to village Dhura Sappar alongwith Shri Attar Singh, District Primary Education Officer, Chamba and Shri Amar Nath and Pawan Kumar aforesaid and visited the house of Shri Mangat Ram, where Smt. Kalawati was present. Respondent Smt. Asha Kumari asked Shri Attar Singh to handover the letter to Smt. Kalawati which he did. The respondent Asha Kumari reminded her that since she has given the appointment letter and provided her with a job so, now she should vote for and support her in lieu of providing job to her. Smt. Kalawati promised to vote and support the respondent in the election as job has been provided to her. In pursuance of that letter of appointment said Smt. Kalawati joined at Primary School, Dhura Sappar on 16-2-98. So the respondent has committed the corrupt practice of bribery by inducing Smt. Kalawati by providing her the job of part time Water Carrier to vote for her in lieu of providing job to Smt. Kalawati, so, her election is liable to be set aside. Copy of letter of appointment is annexed as Annexure P/19 and its true typed copy is attached as Annexure P 19/A.

It may be submitted here that though the letter of appointment is shown to be dated 15-12-97, but the same was handed over to Smt. Kalawati on 11-2-98 and is ante-dated.

It is further submitted that these posts were never published in any newspaper nor their names were sent for from or forwarded by the Employment Exchange and they were appointed in pursuance of the bargain entered into between the respondent and abovesaid persons.

A large number of persons were given similar appointments after the bargain was struck between the respondent Smt. Asha Kumari and persons who were induced and lured to vote for her in lieu of the job/employments provided to them during the election period".

The above averments made by the petitioner have been categorically denied by the respondent in her written statement.

The case of the petitioner that the appointment letters Ex. PW 4/Q and Ex. 4/R were given to Smt. Kaushalya Devi *alias* Guddo and Smt. Kalawati, respectively appointing them as part time Water-Carrier, as bribe for securing their votes in her favour, rests on the testimony of PW 8 Amar Nath and PW 9 Pawan Kumar.

While discussing issue No. 1, above, both these witnesses, namely, PW 8 Amar Nath and PW 9 Pawan Kumar have been held to be interested witnesses and unworthy of reliance. For the self same reasons, no reliance can be placed on their evidence with regard to the present issue.

Though as per the case set up by the petitioner, the appointment letters Ex. PW 4/Q and PW 4/R were handed over to Smt. Guddo *alias* Kaushalya Devi and Smt. Kalawati, respectively by the respondent herself, on 11-2-1998, during her visits to their village, it is significant to note that both these letters are dated 15-12-1997. Copies of such letters, as per RW 7 Pradcep Kumar, were received in the office of the concerned Block Primary Education Officer from the office of the District Primary Education Officer, on 17-12-1997. The endorsements regarding the receipt of such letters in the office of the Block Primary Education Officer, Baikhet, can be found on Ex. RW 7/A and RW 7/B.

Once the appointment letters Ex. PW 4/Q and PW 4/R are shown to have been received in the Block Office on 17-12-1997, the story of the petitioner that these appointments were offered on 11-2-1998 as bribe to Smt. Kaushalya Devi and Smt. Kalawati falls to the ground.

Much reliance was sought to be placed on the two chits Ex. PXX and PXY whereby the respondent is alleged to have approved the appointments of Smt. Kaushalya Devi *alias* Guddo and Smt. Kalawati as Water Carriers. Suffice to say that both these chits are undated and it cannot be said that the same were issued by the respondent during the course of her election campaign. Reading Ex. PXX, PXY, PW 4/Q and PW 4/R together the only conclusion is that the appointments of Smt. Kaushalya Devi *alias* Guddo and Smt. Kalawati as part time Water Carriers were approved by the respondent sometime prior to 15-12-1997 and it was on the basis of such approval that appointment letters Ex. PW 4/Q and PW 4/R were issued on 15-12-1997.

If the appointments *vide* Ex. PW 4/Q and PW 4/R were made on 15-12-1997, it cannot be said that the same were made as a bribe to Smt. Kaushalya Devi and Smt. Kalawati for securing their votes. The mere fact that both Smt. Kaushalya and Smt. Kalawati had joined their duties in pursuance of such appointment letters only in February, 1998 would not mean that such letters were not issued on the dates on which the same are shown to have been issued. Evidence has come on the record that there were winter vacations in the schools with effect from 1-1-1998.

The petitioner, therefore, has failed to prove that the respondent is guilty of corrupt practice of bribery within the meaning of section 123 (1) (A) (b) of the Act. The issue is decided against the petitioner.

RELIEF :

As a result of my findings recorded under issues No. 1 and 2 above, the present petition fails and the same is accordingly dismissed with costs quantified at Rs. 10,000/-.

December 8, 2000.

R. L. KHURANA,
Judge.